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1601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705	3206-0145
FAR 9.1	3206-0145

[52 FR 16037, May 1, 1987. Redesignated at 70 FR 31378, June 1, 2005]

Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)

1601.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regu-

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lation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

PART 1602—DEFINITIONS OF WORDS AND TERMS

Sec.

1602.000-70 Scope of part.

Subpart 1602.1—Definitions of FEHBP Terms

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AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

1602.000-70 Scope of part.

This part defines words and terms commonly used in this regulation.

Subpart 1602.1—Definitions of FEHBP Terms

1602.170 Definition of terms.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

1602.170-1 Carrier.

Carrier means a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, delivering, paying for, or reimbursing the cost of health care services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, including a health maintenance organization, a nonprofit hospital and health service corporation, or

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any other entity providing a plan of health insurance, health benefits or health services, in consideration of premiums or other periodic charges payable to the carrier.

[62 FR 47573, Sept. 10, 1997]

1602.170-2 Community rate.

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan carrier. References in this subchapter to “a combination of cost and price analysis” relating to the applicability of policy and contract clauses refer to comprehensive medical plan carriers using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group.

[55 FR 27414, July 2, 1990, as amended at 62 FR 47573, Sept. 10, 1997]

1602.170-3 Comprehensive medical plan.

Comprehensive Medical Plan means a plan as defined under 5 U.S.C. 8903(4).

1602.170-4 Contractor.

Contractor means carrier.

1602.170-5 Cost or pricing data.

(a) *Experience-rated carriers.* Cost or pricing data for experience-rated carriers includes:

- (1) Information such as claims data;
- (2) Actual or negotiated benefits payments made to providers of medical services for the provision of healthcare, such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and Diagnostic Related Group (DRG) payments;
- (3) Cost data;
- (4) Utilization data; and
- (5) Administrative expenses and retentions, including capitated administrative expenses and retentions.

(b) *Community rated carriers.* Cost or pricing data for community rated carriers

is the specialized rating data used by carriers in computing a rate that is appropriate for the Federal group and the similarly sized subscriber groups (SSSGs). Such data include, but are not limited to, capitation rates; prescription drug, hospital, and office visit benefits utilization data; trend data; actuarial data; rating methodologies for other groups; standardized presentation of the carrier's rating method (age, sex, etc.) showing that the factor predicts utilization; tiered rates information; “step-up” factors information; demographics such as family size; special benefit loading capitations; and adjustment factors for capitation.

[62 FR 47574, Sept. 10, 1997, as amended at 70 FR 31378, June 1, 2005]

1602.170-6 Director.

Director means the Director of the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-7 Experience-rate.

Experience-rate means a rate for a given group that is the result of that group's actual paid claims, administrative expenses (including capitated administrative expenses), retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of services for the provision of healthcare such as capitation not adjusted for specific groups, including mental health benefits capitation rates, per diems, and DRG payments.

[70 FR 31378, June 1, 2005]

1602.170-8 FEHBP.

FEHBP means the Federal Employees Health Benefits Program.

[52 FR 16038, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-9 Health benefits plan.

Health benefits plan means a group insurance policy, contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a

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carrier for the purpose of providing, arranging for, delivering, paying for, or reimbursing any of the costs of health care services.

[62 FR 47574, Sept. 10, 1997]

1602.170-10 Letter of credit.

Letter of credit means the method by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms "carrier reserves," and "special reserves" include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988, as amended at 57 FR 14359, Apr. 20, 1992. Redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-11 Negotiated benefits contracts.

Negotiated benefits contracts are FEHBP contracts in which benefits provided and subscription income are based on either community rating or experience rating.

[62 FR 47574, Sept. 10, 1997]

1602.170-12 OPM.

OPM means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988 and further redesignated at 62 FR 47574, Sept. 10, 1997]

1602.170-13 Similarly sized subscriber groups.

(a) *Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan carrier's two employer groups that:

(1) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(2) Use any rating method other than retrospective experience rating; and,

(3) Meet the criteria specified in the rate instructions issued by OPM.

(b) Any group with which an FEHB carrier enters into an agreement to provide health care services is a potential SSSG (including separate lines of

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business, government entities, groups that have multi-year contracts, and groups having point-of-service products).

(c) Exceptions to the general rule stated in paragraph (b) of this section are (and the following groups must be excluded from SSSG consideration):

(1) Groups the carrier rates by the method of retrospective experience rating;

(2) Groups consisting of the carrier's own employees;

(3) Medicaid groups, Medicare groups, and groups that have only a stand alone benefit (such as dental only);

(4) A purchasing alliance whose rate-setting is mandated by the State or local government.

(d) OPM shall determine the FEHBP rate by selecting the lower of the two rates derived by using rating methods consistent with those used to derive the SSSG rates.

[62 FR 47574, Sept. 10, 1997]

1602.170-14 Subcontractor.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990 and 62 FR 47574, Sept. 10, 1997]

1602.170-15 Large Provider Agreement.

(a) *Large Provider Agreement* means an agreement between—

(1) An FEHB carrier, at least 25 percent of which total contracts are FEHB enrollee contracts, and

(2) A vendor of services or supplies such as mail order pharmacy services, pharmacy benefit management services, mental health and/or substance abuse management services, preferred provider organization services, utilization review services, and/or large case or disease management services. This representative list includes organizations that own or contract with direct providers of healthcare or supplies, or organizations that process claims or manage patient care. A hospital is not

considered to be a vendor for purposes of this chapter.

(i) Where the total costs charged to the FEHB carrier for a contract term for FEHB members, including benefits and services, are reasonably expected to exceed 5 percent of the carrier's total FEHB benefits costs, or

(ii) Where the total administrative costs charged to the FEHB carrier for the contract term for FEHB members are reasonably expected to exceed 5 percent of the carrier's total FEHB administrative costs (applicable to agreements where the provider is not responsible for FEHB benefits costs).

(3) As used in this section, the term "carrier" does not include local health plans that serve under an umbrella arrangement with an FEHB carrier.

(b) The FEHB Program Annual Accounting Statement for the FEHB Plan for the prior contract year will be used to determine the 5 percent threshold under Large Provider Agreements.

(c) Large Provider Agreements based on cost analysis are subject to the provisions of FAR 52.215-2, "Audit and Records-Negotiation."

(d) Large Provider Agreements based on price analysis are subject to the provisions of 48 CFR 1646.301 and 1652.246-70.

[70 FR 31379, June 1, 2005]

PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.

1603.7001 Policy.

1603.7002 Additional guidelines.

1603.7003 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

1603.7001 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet

which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to continue participation in the FEHB Program.

[52 FR 16039, May 1, 1987. Redesignated at 62 FR 47574, Sept. 10, 1997]

1603.7002 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHBP shall—

(a) Be limited to the merits of the carrier's FEHBP plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHBP plans is the comparison chart issued by OPM.

(b) Not use the FEHBP logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.